ANNUAL REPORT 2011

FAIR PRACTICES OFFICE

An independent office working to promote fair practices at the Workers' Compensation Board of Saskatchewan

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Terms commonly used in this report

Board - the Board of Directors

FPO - Fair Practices Office(r)

WCB - Saskatchewan Workers' Compensation Board

MESSAGE FROM THE FAIR PRACTICES OFFICER

It is my pleasure to present the 2011 Annual Report of the Fair Practices Office.

I joined the WCB in August 2011 when Murray Knoll, the WCB's first Fair Practices Officer, retired. Murray led the Office from its initial development into the very efficient and responsive entity it is today. His thoughtful and collaborative approach to resolving issues ably set the course for the Office. I wish him a long and happy retirement.

The role of the Fair Practices Office has not changed since it opened in 2004. We continue to receive complaints and inquiries from workers, employers, and care and service providers. Independence and integrity are core and critical values of the Fair Practices Office. We first listen to the concerns raised. Once we understand the concerns, we look for a suitable resolution.

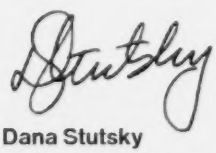
Last year saw the second highest number of complaints received, at 432. This is a small increase from 425 in 2010 and two fewer than the highest number received in 2008. We continue to receive information requests. In 68 per cent of our inquiries, we support the decisions of the WCB's claims and case management staff.

A large percentage of our inquiries, almost 24 per cent last year, are from second and third time clients. Their feedback is that we were helpful to them in the past and so they are calling again for assistance.

One new trend is the referral rate from information on the WCB website, which is a phenomenon seen in all sectors of society. We note that more than 20 per cent of our customers report they found us through WCB information, including our website.

In my time as the Fair Practices Officer, I am impressed with the WCB employees' genuine dedication to providing quality and timely service to injured workers and employers. The Office receives a high degree of cooperation from all staff, from implementing recommendations to proactively helping to resolve complaints. In particular, the Office's Intake and Inquiry Officer provides invaluable assistance. Her attention to detail and professional and efficient attention to the concerns at intake have certainly helped me during my first months at the WCB.

Workers and employers continue to benefit from an independent and impartial Office. Through our work, we resolve service and fairness concerns and act an as agent of positive change. I look forward to building on our track record.



Dana Stutsky
Fair Practices Officer

OVERVIEW

Establishment of the Office

The FPO was first recommended by the James Dorsey Review of 2000. Dorsey envisioned *"the establishment of a Fair Practices Office that will assist our clients with disputes and complaints by steering them through the process to the right place. In addition, the FPO will investigate complaints and tabulate statistics that can point to the need for process and or policy changes".*

The Saskatchewan Workers' Compensation Act Committee of Review 2001 Report in referencing fairness, cited Section 21.1(1) of *The Workers' Compensation Act, 1979* (the Act) and its requirement that *"The Board shall: (a) treat workers and their dependents in a fair and reasonable manner".* The Report also referenced and supported the recommendation of the James Dorsey Review of 2000 to establish the FPO.

In September 2003, the FPO was officially established with the appointment of the first Fair Practices Officer. During its first six years, the FPO operated on the basis of a Mandate Statement provided by the WCB Board members. The role and mandate of the FPO was more formally defined through Policy 05/2009 in September 2009. Further clarification was provided by Board members with the approval of Policy 15/2010, which took effect on July 1, 2010. The policy confirms that the Fair Practices Officer is appointed pursuant to Section 21(1) of the Act and has the power to conduct inquiries pursuant to section 27(1) of the Act. The complete policy is available in chapter 9.5 of the WCB Policy Manual.

Role and mandate of the FPO

The FPO has a mandate to:

- Receive, investigate and resolve complaints about unfair practices in all areas of WCB service delivery raised by workers, employers and external service providers.
- Identify complaint trends, policy matters and systemic issues and make recommendations for improvements.

If the Fair Practices Officer determines that an unfair practice has occurred, she may seek to resolve the issue at the most appropriate administrative level of the WCB. If a remedy is not implemented, she will raise the matter to senior management levels of WCB, including the Chief Executive Officer. Unresolved issues are reported to the Board members.

The Fair Practices Officer may, on her own initiative, investigate, identify and make recommendations on systemic issues. These are issues that effect more than one file and occur on an ongoing basis. Findings and recommendations initially will be presented to senior administration within WCB, including the Chief Executive Officer and then to the Board members.

Authority of the FPO

The FPO has jurisdiction to investigate all areas of WCB service delivery including, but not limited to:

- Delays in adjudication, communication, referrals or payment.
- WCB staff conduct.
- Spoken and written communications.
- Implementation of appeal decisions.
- Employer services.
- Benefit payments.
- Wrong application of policy.

Complaints NOT within the authority of the FPO

A complaint is not within the jurisdiction of the FPO if it is about:

- The conduct or a decision of the Board members.
- Changes to the Act or its regulations.
- An issue outside of the jurisdiction of WCB.
- An issue under appeal.
- An issue being handled by the Office of the Workers' Advocate, unless the Workers' Advocate requests that the FPO review the complaint.
- An alleged illegal or fraudulent act. Allegations of this nature are referred to the investigative unit within Internal Audit.

Reporting

The FPO reports directly to the Board members through the WCB Chairperson. The FPO reports quarterly, or more frequently if requested by the Board members or the FPO.

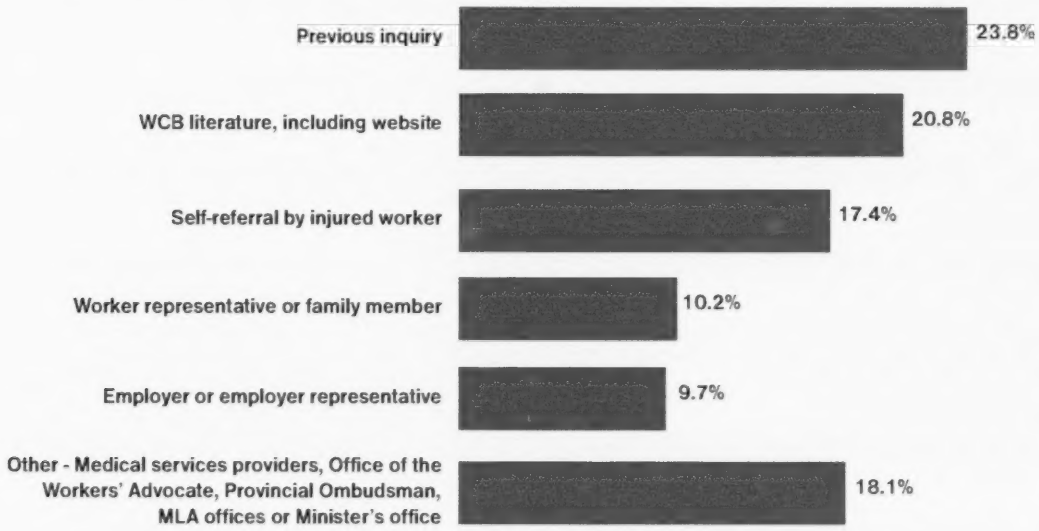
The FPO publishes an independent annual report that outlines the activities of the office. Statistics and case summaries are provided to show the type of work the office performs on a regular basis.

2011 – Activities during the year

- Attended the Association of Workers' Compensation Boards of Canada Learning Symposium in Edmonton.
- Attended the WCB's Compensation Institute in Saskatoon and hosted an information table.
- Delivered a presentation on the role of the FPO to the attendees at the WCB's Compensation Institute.
- Attended the Forum of Canadian Ombudsman conference in Vancouver.
- Participated in quarterly teleconference meetings with the Fairness Working Group (counterparts in other WCBs from British Columbia, Manitoba, Ontario, Newfoundland and Labrador, and Nova Scotia).
- Met with the Fairness Working Group in Vancouver.
- Attended the WCB's Annual General Meetings in both Regina and Saskatoon.
- Met with Office of the Workers' Advocate staff.
- Attended the 'Sharpening Your Teeth' investigative training seminar for Ombudsmen in Toronto.
- Attended the WCB's rate setting meeting in Regina.
- Met with the Provincial Ombudsman.

How do people find the FPO?

Almost one-fourth of our calls are from people who have had a previous inquiry with the FPO. We also continue to receive calls from people who say they only learned recently about the FPO. During 2011, we asked callers how they learned about the FPO. This is how they replied:



Common Complaints

The most common complaint received by the FPO is that someone disagrees with a WCB decision. The following list provides some examples of these complaints:

- I have not recovered from my work injury.
- My wage loss benefits have been reduced or ended.
- WCB does not agree that my medical condition is related to my work injury.
- My return to work program is not suitable.
- My wage loss benefits have been suspended.
- I don't agree with how my benefits have been calculated.
- I require additional or different medical services.
- My claim has been denied.
- The travel expenses provided are too low.
- I don't agree I've been overpaid.

COMPARATIVE STATISTICS

for the calendar years 2007 through 2011

Number of Complaints / Inquiries Received

	2011	2010	2009	2008	2007
Complaints received	**432**	425	407	434	401
Re-opened	**44**	33	25	39	43
Total	**476**	458	432	473	444

Source of Complaints / Inquiries (%)

	2011	2010	2009	2008	2007
Injured workers	**88.4**	93.2	92.9	83.6	90.1
Employers	**10.2**	5.9	6.9	10.4	6.2
Other	**1.4**	0.9	.2	6.0	3.7
Total	**100.0**	100.0	100.0	100.0	100.0

Category of Complaints / Inquiries

	2011*	2010*	2009*	2008*	2007
Disagree with decision	**355**	338	275	332	212
Information requests	**128**	131	126	120	73
Timeliness & process delays	**81**	68	65	76	55
Communications/service issues	**81**	75	55	96	56
FPO issues (systemic)	**1**	1	2	1	2
Other	**0**	0	0	0	3
Total	**646**	613	523	625	401

* Beginning in 2008, two or more categories can be entered for each complaint that is registered. In prior years, only one category per complaint was entered.

Resolution (closed files)*

	2011	2010	2009	2008	2007
Completed by FPO without referral	**243**	262	276	263	248
Called WCB for clarification	**52**	52	30	38	31
Referred to WCB for review	**133**	111	101	133	122
Total	**428**	425	407	434	401

* Four files remained open at the end of 2011.

Outcome of Referrals to WCB

	2011	2010	2009	2008	2007
Decision changed	**28**	20	23	18	13
New action taken	**92**	81	74	112	101
Reviewed – no change	**13**	10	4	3	8
Total	**133**	111	101	133	122

Response Time to Close (%)

	2011	2010	2009	2008	2007
0-7 days	**73.1**	71.5	75.2	75.1	69.6
8-30 days	**17.8**	19.1	16.0	18.9	20.9
Over 30 days	**9.1**	9.4	8.8	6.0	9.5
Total	**100.0**	100.0	100.0	100.0	100.0

CASE SUMMARIES

The following case summaries are examples of inquiries completed by the Fair Practices Office. Names are not provided to protect the privacy of the individuals who brought these concerns to the FPO.

CASE SUMMARY 1 – Reasonable hotel costs covered

A worker complained that the WCB did not pay back his hotel costs. The worker had a crush injury to a finger. The worker lives in a rural community and saw the doctor at the local Health Centre the morning of his injury. The doctor bandaged him up and referred him to a plastic surgeon in Regina, with an appointment the following day. The worker decided he wanted a second opinion. He drove into Regina (a four-hour drive) the afternoon of his injury and saw a doctor at an emergency clinic.

The worker stayed the night in Regina and, as scheduled, saw the plastic surgeon the following day. The plastic surgeon amputated two joints of his finger that afternoon. The worker didn't feel well after the procedure. He decided to stay overnight in Regina. The next day he felt well enough to go home. He healed well and returned to work within two weeks.

Later that month, the worker returned to Regina for a follow-up appointment with the plastic surgeon and an appointment with a hand therapist. His first appointment was at 10:00 A.M., so he drove to and stayed in Regina the night before the appointments. He was finished his appointments by 3:00 P.M. and drove home that afternoon. He did have other hand therapy appointments. He could book them so he could drive to Regina and back home the same day.

The worker sent his hotel bills to the WCB. The WCB told him that hotel costs had to be pre-approved. Because his were not, the WCB would not reimburse them.

I reviewed the WCB's policy and found that 'pre-approval' was not required. The Team Leader agreed that the hotel costs were reasonable and agreed that the WCB should pay the expenses.

CASE SUMMARY 2 – Wage rate when unable to progress due to other medical issues

A worker complained that she thought her benefits stopped because she had other medical problems that kept her from going back to work. She had just started an eight-week return-to-work plan. She was in the second week of the plan when her physician took her off work.

Policy 03/2009 says that the WCB can suspend benefits if a worker cannot continue their program because of reasons other than the work injury. The worker should receive up to four weeks notice. The WCB followed policy in this case.

It appeared, though, that the WCB made an error. The WCB paid the worker the wage rate for the gradual return to work. This seemed unfair. She could not increase her work hours and so could not earn an increased wage, as had been set out in the graduated plan.

I discussed this with the Team Leader. He agreed the worker should get the wage rate she had been receiving when she went off work rather than the gradually reduced amount. The WCB paid the additional amount to the worker.

CASE SUMMARY 3 – Unable to attend surgery due to other medical issues

(Same policy as Case Summary #2)

A worker could not have surgery for his work injury because he was waiting for another surgery not related to his injury. Policy says that if the unrelated medical condition delays or prevents the worker's recovery and return to work, the WCB can suspend benefits. The WCB gave him notice and suspended his benefits until he could have his work injury surgery.

The notice was appropriate. It was unlikely, though, that the worker would be able to return to work even after the surgery for his injury. This meant that waiting for his unrelated surgery did not delay his recovery and return to work. The FPO recommended that the WCB restore his benefits retroactively. The WCB followed the recommendation.

CASE SUMMARY 4 – Estimated earnings when there is one year of higher earned income

The FPO received a number of complaints in 2011 about how estimated earnings are calculated.

The WCB estimates a worker's earnings when they can work but cannot return to the job they had when injured. Policy 26/2010, Determination of Long-Term Loss of Earnings, says that the WCB will reduce a worker's estimated earnings or actual earnings, whichever is greater, from the worker's ongoing wage-loss entitlement.

In this case, the worker was a long-haul truck driver. Because of her injury, she could no longer do that work. She took a job as a pilot truck driver. A pilot truck driver drives along with a wide-load semi unit to warn other drivers on the road.

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The worker faithfully reported her earnings each year. Her actual earnings were greater than what she was estimated to earn, and the WCB used this figure to reduce her wage-loss payments.

Each year her income increased a slight bit, except for 2009, when the economic boom meant there was more work available. When the worker reported her 2009 earnings, her wage loss benefit for 2010, the WCB reduced her wages appropriately. The next year her actual earnings went down to a more typical level, but the WCB used the 2009 income level, increased by the Consumer Price Index. This seemed unfair to the worker. The income for pilot drivers varies from year to year. She felt the one high-income year was an anomaly that would not continue or happen again.

The FPO believed the WCB's actions were unfair and discussed the complaint with the Team Leader. The Team Leader agreed to use a three-year rolling average to estimate earnings. This plan took the one high year of earnings, but also accounted for the subsequent lower income years.

CASE SUMMARY 5 – Estimated earnings where worker's condition changes

(Same policy as Case Summary #4)

A worker complained that he was not able to continue working at the employment previously determined for him due to his worsening medical condition. A number of years earlier, the WCB estimated his earnings into a new occupation. He had the skills to do the work and it was in line with his medical restrictions. His new occupation employed him for many years, but his medical condition worsened. He needed more medical treatment and further surgery. As a result, he could not continue his work or earn an income. The WCB reduced his wage-loss benefits by the estimated earnings. He felt the decision was unfair.

I reviewed the policy, as well as the information used to figure out the worker's estimated earning ability. The WCB applied the policy fairly, but medical information was not clear if the worker was capable of certain job tasks. The evidence also was outdated and likely no longer applicable.

I discussed the case with the Team Leader. He did not agree with the FPO recommendation to reinstate full wage-loss benefits and complete another earnings estimation based on the worker's current medical condition. The worker successfully appealed and the WCB re-instated his wage loss retroactively. The WCB currently is re-estimating his earning capacity.

CASE SUMMARY 6 – Worker no longer owner of the company

A worker called to say that the WCB denied his claim because he was an owner of the company he worked for and did not have personal coverage. The worker said he had been a co-owner of the business a number of years previously. He had not elected to purchase personal WCB coverage for himself at that time. His brother took over the business about ten years ago. The worker said he was now a salaried employee.

Policy 11/2011, Employer Coverage and Registration, says that business owners can elect for personal coverage for themselves. Certain restrictions may apply. If they do not choose personal coverage, they cannot receive WCB benefits if they are hurt at work. In this case, the worker said the policy should not apply to him because he was no longer an owner.

The worker's brother provided confirmation that he owned the business to the Team Leader of Revenue and Employer Accounts. The Team Leader confirmed the brother was the sole proprietor of the business and the worker was eligible for coverage for his work injury. Once the WCB received this information, Claims Entitlement accepted the claim and paid benefits.

CASE SUMMARY 7 – Employer granted cost relief when benefits paid in error

An employer called saying he thought the WCB paid full wage-loss benefits to one of his workers when the company issued a lay off. The worker had worked at modified duties just before the layoff and since the recall.

Policy 02/2008, Compensation – Layoff, Strike or Lockout, says that injured workers will not be protected from the effects of lay offs or other labour disruptions.

At the time of layoff, the worker had returned to modified duties. He was receiving wages for the hours he worked and partial WCB wage-loss benefits. When the company laid off all the workers, the injured worker had his benefits increased to full wage-loss benefits. The Policy allows only for continuation of the partial wage-loss benefits the worker had been receiving just prior to the lay off.

The employer thought it was unfair that the WCB charged the full wage-loss benefits to his experience rating rather than charging for the partial wage loss benefits only. The Team Leader agreed with the FPO and the WCB granted cost relief to the employer for the unfair costs.

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